I agree with the view of the learned District Judge that although the respondent was granted leave to issue distress he is not estopped from denying that the appellants were his tenants "on the same terms and conditions" as the tenancy agreement with the firm and that the respondent's action had the effect of acknowledging the appellants at the most as monthly tenants pending the finalisation of the new agreement.

The appeal is dismissed with costs.

Appeal dismissed.

Solicitors: *Wee Eng Lock & Son; Wan & Choo.*

KIAN HUAT LORRY TRANSPORT v. KAMARDIN BIN ADAN & ANOR.

[D.C.A. (Rajah J.) November 24, 1979]

[Singapore — District Court Appeal No. 22 of 1979]

Torts — Negligence — Injury in the course of employment — Employer's duty to provide safe system of work.

Employment — Injury in the course of — Employer's duty to provide safe system of work.

The plaintiff in this case claimed for damages for personal injuries sustained during the course of his employment by the first defendants, as a labourer at Telok Ayer Basin. The plaintiff claimed that there was negligence on the part of the first defendant as his employers to take reasonable care for the safety of the plaintiff and also negligence on the part of the second defendants, their servants or agents in the use, management and driving of the motor crane. The facts revealed that at the material time, the plaintiff was engaged in unloading bales of rubber from a lorry into a lighter by means of a mobile crane owned by the second defendants. The method of operation was that a net was spread on the ground and bales of rubber, about ten at a time were pushed on to the net. The net was then hooked to the hook of the mobile crane. The driver of the crane of the second defendants would then, on a signal from the crane attendant also of the second defendants, cause the crane to raise the net and swing it to the lighter anchored alongside the wharf at Telok Ayer Basin. The plaintiff submitted that he was working on the ground when the net containing the rubber bales above him burst, and the rubber bales fell down. He ran away but one of the bales bounced and hit his leg.

At the trial the parties agreed general and special damages at $6,000 leaving the question of liability to be tried. The learned trial judge absolved the plaintiff of any negligence and entered judgment for the plaintiff against the first defendant. He dismissed the claim against the second defendants. The first defendants appealed.

Held: (1) it was the responsibility of the crane driver and his attendant to provide and to ensure a safe crane operation, including all paraphenalia that was part and parcel of such safe operation; it was the second defendants' responsibility to see to it that the net, which was part of the lifting by crane of the bales of rubber, was in a condition fit for the purpose for which it was intended;

(2) as the second defendants were also negligent and therefor liable to the plaintiff, liability should be apportioned between the two defendants on an equal basis.

DISTRICT COURT APPEAL.

Shriniwas Rai for the appellants (first defendant).

M.A. Valibhoy for the first respondent (the plaintiff).

Yap Tyou Min for the second respondent (second defendant).

Rajah J.: The plaintiff's claim was for damages for personal injuries and consequential loss suffered by him and caused during the course of his employment by the 1st defendants as a labourer at Telok Ayer Basin on or about the 8th day of May 1972 by the negligence of the 1st defendants, their servants or agents and/or by breach by the 1st defendants of their duty to the plaintiff as employers of the plaintiff to take reasonable care for the safety of the plaintiff as their servant and/or by the negligence of the 2nd defendants, their servants or agents in the use management and driving of a motor crane and for costs.

In his statement of claim the plaintiff alleged that he was employed by the 1st defendants as a labourer and went on to say as follows: —

"2. It was part of the duty of the plaintiff to accompany the 1st defendants' lorries and to unload bales of rubber from the lorries on to lighters by means of a mobile crane (SGA. 8241) owned by the second defendants and operated by them their servants or agents. On the day of the accident the bales of rubber were unloaded at Telok Ayer Basin.

3. The system for unloading the rubber bales from the lorries and then load them to the lighters was as follows. A net was first spread on the ground and the bales of rubber were pushed from the lorry. About 10 bales were put in the net and thereafter the net was hooked onto the hook of the mobile crane. The driver of the crane, a servant or agent of the second defendants would then on a signal from the crane attendant also a servant or agent of the second defendants cause the crane to raise the net and swing it onto a lighter which was anchored alongside the wharf.

4. The system of lifting and swinging the bales of rubber was as both the defendants knew or ought to have known unsafe in that if the net broke the bales of rubber would fall and injure the people below. A safe system would have ensured that nobody was below the raised net.

5. On or about the 8th day of May 1972 the plaintiff in the course of his duty as aforesaid was spreading a net on the ground when another net with bales of rubber in it and which was hooked on the mobile crane burst above his head causing the bales to fall thereby injuring the plaintiff."

The 1st defendants by their defence denied that the accident was caused by their negligence or that of their servants or agents and said that the accident was caused solely or contributed to by the negligence and/or breach of duty of the 2nd defendants their servants or agents and/or the negligence of the plaintiff.

The 2nd defendants by their defence denied that the accident was caused by their negligence or that of their servants or agents and said that their servants or agents could not be responsible for the bursting of the net as the said net was provided by the hirers of their motor crane and that there was no way for them their servants or agents to know the strength of the net on a visual examination thereof. Further and in the alternative they said that the accident was solely caused or contributed to by the negligence and/or breach of duty of the 1st defendants their servants and/or the negligence of the plaintiff.

At the trial the parties agreed general and special damages at $6,000, leaving the question of liability to be tried. At the conclusion of the trial the learned trial judge absolved the plaintiff of any negligence and entered judgment for the plaintiff against the 1st defendant in the sum of $6,000 and costs. He dismissed the claim against the 2nd defendants and ordered that the 1st defendants pay the costs of the 2nd defendants.

There was hardly any dispute on the facts and on the method of operating the mobile crane for the

purpose of loading bales of rubber from the quayside into a lighter. They are set out in the judgment of the learned trial judge: —

"On 8th of May 1972, the plaintiff was working at Telok Ayer Basin for the first defendants as a lorry attendant-cum-labourer. At the time of the accident, he was engaged in unloading bales of rubber from a lorry into a lighter by means of a mobile crane owned by the second defendants. As a result of the accident, the plaintiff sustained a compound fracture of the right tibia and fibula. He also had a laceration on the right leg. At the hearing, the parties had agreed on general damages, inclusive of special damages, of $6,000.

The method of operation was that a net was spread on the ground and the bales of rubber, about ten at a time, were pushed on to the net. The net was then hooked to the hook of the mobile crane. The driver of the crane of the second defendants would then, on a signal from the crane attendant also of the second defendants, cause the crane to raise the net and swing it to the lighter anchored alongside the wharf at Telok Ayer Basin.

The evidence of the plaintiff was that on that day he went to Telok Ayer Basin in a lorry SGG 3630. The driver of the lorry was a partner of the first defendants. The side-board of the lorry was opened, and the rubber bales were unloaded one by one onto the ground. He was working on the ground. Ten bales were put into a net which was on the ground by the side of the crane. After that the crane lifted the net. At that time he was spreading another net on the ground. The net above him burst, and the rubber bales fell down. He ran away but one of the bales bounced on the ground and hit his leg. He was injured."

The learned trial judge in his judgment rejects the 1st and 2nd defendants' plea of negligence on the part of the plaintiff and finds that, "there was no negligence on his part for the injury he sustained that day." Having so found he goes on to say, "the issue of liability therefore is between the two defendants". If by this the learned trial judge means that on the facts of the instant case only one or the other of the two defendants could be liable then I respectfully disagree with him. Thereafter, in my opinion, the issue was whether, on the facts of the case, only one or both of the defendants were liable to the plaintiff and if both were liable then whether the court would apportion the damages between them and, if so, in what proportion.

The present appeal is by the 1st defendants and they appeal on the following grounds: —

"That the learned Trial Judge erred in fact and in law:—

(a) in holding that the appellants had failed to take reasonable care and provide a safe system of work for the first respondent/plaintiff;

(b) in holding that the second respondents free from blame as the nets were not provided by the second respondents;

(c) Failed to appreciate that first respondent/plaintiff had warned the crane driver that the net was old;

(d) Failed to appreciate that crane driver was in control of lifting of rubber bales;

(e) that in fact and in law, the learned Trial Judge ought to hold that the second respondents had contributed to the accident;"

At the hearing of the appeal counsel for 1st defendant (appellant) did not seriously pursue ground (a) but concentrated on grounds (b), (c), (d) and (e), all of which really relate to the issue of whether the 2nd defendants, on the facts of the case, should not have also been held liable on the plaintiff. The plaintiff (1st respondent) although present at the trial quite rightly let the 1st defendants do all the running.

On the question of the liability of the 2nd defendants, the learned trial judge has this to say: —

"Now, on the evidence I have set out, I find that the second defendants did not provide the nets for the lifting of the bales of rubber from the first defendants' lorry into the lighter. As the cause of the accident was that the rope round the net gave way, I also find that there was no negligence on the part of the second defendants' crane driver in the operation of the lifting of the bales of rubber. It is true that the crane driver said that it was part of his duty to ensure that the nets were in a good state for the purpose of loading and unloading bales of rubber, for if they were not, he could refuse to operate the crane. But his evidence also was that he did inspect them. They were old nets. He was satisfied that they were usable for the particular purpose. Indeed, they had been used all day, for loading and unloading bales of rubber, from about 8.40 a.m. till about 4 p.m. when the accident occurred. I therefore also find that there was no breach of any duty on the part of the second defendants or their servant."

In his judgment the learned trial judge found that "There was positive evidence that they (the 1st defendants) had failed to take reasonable care and provide a safe system of work". As to what a safe system of work should have been was set out in paragraph (g) of the statement of claim and this went unchallenged at the trial. It reads as follows: —

"The system of lifting and swinging the bales of rubber was as both the defendants knew or ought to have known unsafe in that if the net broke the bales of rubber would fall and injure the people below. A safe system would have ensured that nobody was below the raised net."

In my view, it was the responsibility of the crane driver and his attendant to provide and to ensure a safe crane operation, including all paraphenalia that was part and parcel of such safe operation.

It was the 2nd defendants' responsibility to see to it that the net, which is an integral part of the lifting by crane of the bales of rubber, was in a condition fit for the purpose for which it was intended. I do not think it is enough for the crane driver to say that he had inspected the net and that he was satisfied it was safe for the intended purpose. This plea of the crane operator to my mind would only have been available to him if there had been further evidence as to how or why a net of which he had been satisfied that it was usable for the particular purpose should suddenly have become unusable for the intended purpose. Any other view would derogate from the principle of an employer's responsibility of providing and maintaining a safe system of work for his employees.

There is uncontroverted evidence by the plaintiff that "the crane attendant decides on the number of bales in the net." This being so, one would have thought that it would have been safer for the crane attendant to decide on the condition of the net and

the number of rubber bales the net could safely carry at any one time, particularly as the loading operation was a continuous operation lasting over a period of some seven to eight hours. Further, and this to my mind is crucial, a safe system would have ensured that workers in the course of the operation would not find themselves under a raised net of rubber bales. The plaintiff's unchallenged evidence on this reads, "The net was lifted, the jib had moved four feet when the net burst. The 10 bales fell on the ground. The net was about 12 feet from the ground. One bale bounced on the ground and hit me." There is no finding on this aspect of the case by the learned trial judge. My view of the matter is, as often happens, persons in charge of repetitive operations become careless and so fail to see that a safe system of work is maintained.

For the reasons set out above I held the 2nd defendants negligent and therefore also liable to the plaintiff. I apportioned liability as between the two defendants on an equal basis and entered judgment accordingly.

Order accordingly.

Solicitors: *Goh & Hin; Murphy & Dunbar; Battenberg & Talma.*

MALAYSIAN REPORTS

PONNUKON v. JEBARATNAM

[F.C. (Raja Azlan Shah C.J. (Malaya), Salleh Abas F.J. & Abdoolcader J.) July 9, 1979]

[Ipoh — Federal Court Civil Appeal No. 32 of 1978]

Partnership — Partnership in land development — Whether extends to ownership of land — Separate property of partner.

The appellant had obtained an option to sell land for $60,000. The appellant found difficulties in getting a buyer and he formed a partnership with the respondent to develop the land into a housing estate. Efforts were made to obtain a loan from a bank to buy the land but these efforts were not successful. Subsequently the respondent bought the land with his own money and money he borrowed from his relatives and the bank. The appellant brought an action to seek a declaration that the land was held in trust for the partnership between him and the respondent. The learned trial judge dismissed the action and the appellant appealed.

Held: (1) there was no agreement at all between the parties that the land was to be purchased or treated as partnership property;

(2) the object of the firm being land development it did not necessarily mean that the land must be owned by the firm in order to carry on with the business and no such term could be implied from the evidence;

(3) the land was not paid for with the funds of the partnership but with funds raised by the respondent on his own separate act independently of the appellant or of the partnership;

(4) the learned trial judge was therefore right in holding that the land was the separate property of the respondent and not a joint ownership of the partnership.

Cases referred to:-

(1) *Gian Singh* v. *Devraj Nahar & Anor.* [1965] 1 W.L.R. 412; [1965] 2 M.L.J. 12.

(2) *Re Johns' Assignment Trusts, Niven and Niven* [1970] 1 W.L.R. 955.

(3) *Smith* v. *Watson* 2 B. & C. 401: 107 E.R. 434.

(4) *Miles* v. *Clark* [1953] 1 W.L.R. 537.

(5) *Ratna Ammal & Anor.* v. *Tan Chow Soo* [1964] M.L.J. 399.

FEDERAL COURT.

A. Jayadeva (*S.N. Leow* with him) for the appellant.

V.K. Palasunthram (*S.M. Ratnam* with him) for the respondent.

Cur. Adv. Vult.

Salleh Abas F.J. (delivering the judgment of the Court): For the purpose of our judgment in this appeal, the facts may be briefly stated as follows.

On July 3, 1969 one Mrs. J. Devadason representing the vendor of the land in question, gave to the appellant an option to sell it for $60,000 at $1,200 per acre. A commission of 2% would be paid to the appellant, and if he could sell at a higher price, in addition to the commission he would be entitled to keep the difference. The option was valid for one year and therefore should expire on July 3, 1970. Because of the nature and situation of the land, the appellant found difficulties in getting a buyer despite his numerous attempts to get one. This is clearly borne out in his letter dated March 1, 1971 to Mr. Ernest V. Devadason, the lawyer son of the vendor. The